his declarations of facts. As a matter of policy, owever, since a person's declarations are often the only possible method of determining intention, it may well be that the test of credibility should give way to that of practical convenience.

RES JUDICATA AS APPLIED TO MATTERS OF LAW. — It is commonly said that any right, question, or fact, distinctly put in issue and directly determined by a court of competent jurisdiction, cannot be disputed in a subsequent action between the same parties, whether upon the same or upon a different subject-matter.[1] So sweeping a definition of *res judicata* has in many cases led to a failure to distinguish between its two main applications. It applies primarily in cases where parties seek to litigate again the same cause of action which has been decided between them in a prior suit, but it is employed also to estop them from disputing in one action matters that have been authoritatively settled between them in another.[2] In the first class of cases the wisdom of the rule is clear. The parties have had their day in court, the matter is settled, and the most obvious public policy forbids them to raise the controversy afresh.[3] Consequently, the estoppel may fairly cover all matters connected with the former action. In the other class of cases, however, the rule should have a much narrower application. Not only should the estoppel be limited to matters distinctly put in issue and determined in the prior action,[4] but it should also be restricted to questions of fact or mixed questions of law and fact, and should never be extended to pure questions of law.[5] It is absurd to say that in so far as certain parties are concerned a court should be bound irrevocably to adhere to a proposition of law laid down in a previous suit. Yet this seems to be the result of many decisions.[6] Of course, as a matter of practice, the courts would usually follow a former decision upon the same state of facts, and so it would in most cases make little difference to the parties whether their rights were determined as *res judicata* or upon the theory of *stare decisis*. That this is not always true is shown by a recent Nebraska case. A statute provided that railroads should not be subject to county taxes on any part of their continuous line of road. The plaintiff, a railroad, owned a bridge which had for some time been taxed by the defendant county. In 1886 the railroad had brought an action to recover back these taxes. All facts concerning the bridge being conceded, the court had found that it was not a part of the continuous line of road within the meaning of the statute.[7] In subsequent suits between different parties this construction had been held to be erroneous. The present action was brought upon the same conceded facts to restrain the county from assessing the bridge for the year 1901. The court allowed the plaintiff to question the construction given the statute in the former action, holding that a question of law could not be *res judicata*. *Chicago, B., & Q. R. Co.* v. *Cass County*, 101 N. W. Rep. 11. The facts of this case furnish the strongest argument against the rule which applies the

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1 Southern Pac. R. Co. *v.* U. S., 168 U. S. 1.
2 2 Black, Judgments § 504.
3 2 *Ibid* § 500.
4 Cromwell *v.* County of Sac, 94 U. S. 351.
5 Bigelow, Estoppel 100; Philadelphia *v.* Ridge Ave. R. R. Co., 142 Pa. St. 484.
6 Southern, etc., Co. *v.* St. Pauls, etc., R. Co., 5 C. C. A. 249.
7 Cass County *v.* Chicago, etc., R. Co., 25 Neb. 348.

doctrine of *res judicata* to questions of law, for had the court adopted such a rule, it would have been forced to apply one construction of the law to the parties before it, while it applied a different construction in all suits between other persons.[8]

RECENT CASES.

ADVERSE POSSESSION — WHO MAY GAIN TITLE BY ADVERSE POSSESSION — RIGHTS OF ONE INTENDING TO ACQUIRE A HOMESTEAD. — The defendant entered the plaintiff's land, thinking that it belonged to the United States, with the intention of acquiring a homestead. He remained in possession until the statute of limitations had run, when the plaintiff attempted to eject him. *Held*, that the plaintiff is barred. *Maas* v. *Burdetzke*, 101 N. W. Rep. 182 (Minn.). See NOTES, p. 380.

ALIENS — EXCLUSION OF ALIENS AS A JUDICIAL QUESTION. — The Chinese Exclusion Act of 1894 provided that the decision of the appropriate immigration or customs officers excluding an alien should be final unless reversed on appeal to the Secretary of the Treasury. The Secretary of Commerce and Labor, to whom the enforcement of the law was subsequently delegated, refused admission to the adopted children of a Chinese merchant domiciled in this country and, as such, possessed of rights under a treaty with China. *Held*, that the decision is reviewable by the federal courts. *In the Matter of Fong Yim*, 32 N. Y. L. J. 1349 (U. S. Dist. Ct., S. D., N. Y., 1905).

The precise question seems never to have been adjudicated, but the result is hard to reconcile with certain decisions of the Supreme Court. See *Lem Moon Sing* v. *United States*, 158 U. S. 538. For some consideration of the principles involved, see 17 HARV. L. REV. 488.

BANKRUPTCY — INVOLUNTARY PROCEEDINGS — PETITIONER ESTOPPED BY PARTICIPATION IN APPOINTMENT OF RECEIVER. — After a receiver had been appointed for the defendan. corporation, two of the present petitioners requested the court to appoint a co-receiver, and several months later used these receivership proceedings as a basis for petitioning the defendant into bankruptcy. *Held*, that the petitioners are estopped from instituting such proceedings. *Lowenstein* v. *Henry McShane Mfg. Co.*, 12 Am. B. Rep. 601 (U. S. Dist. Ct., Dist. of Md.).

As there is no precedent exactly in point, the court reasons from the rather doubtful analogy that one who assents to an assignment for the benefit of creditors is estopped from later setting it up as an act of bankruptcy. *In re Romanow*, 92 Fed. Rep. 510; *Simonson* v. *Sinscheimer*, 95 Fed. Rep. 948. The reasoning of these cases proceeds upon the ground that the creditor, having already agreed to one method of distribution of his debtor's property, cannot afterwards file a petition which would be virtually repudiating his former position. But the duty of a receiver is not necessarily like that of an assignee, to wind up and distribute the debtor's estate; it is primarily to preserve the property, and to carry on the business under the direction of the court. Since the receiver may not conduct the enterprise as satisfactorily as anticipated, it necessarily follows that a concurrence in his appointment is perfectly consistent with a later desire to have bankruptcy proceedings instituted. It would seem, therefore, that the petitioner could hardly be disqualified by such concurrence.

BANKRUPTCY — PRIORITY OF CLAIMS — RIGHT OF PARTNERSHIP CREDITORS TO SHARE IN INDIVIDUAL ESTATE. — A partnership of which a bankrupt had been a member was insolvent and had no solvent members surviving. *Held*, that creditors of the partnership may not participate in the bankrupt's estate until the bankrupt's personal creditors have been satisfied. *In re Corcoran*, 14 Oh. Fed. D. 294. See 17 HARV. L. REV. 132.

BILLS AND NOTES — CHECKS — EFFECT OF DEATH OF DRAWER. — The deceased on his death-bed drew a check in favor of the defendant and delivered it to him. The check was not presented to the bank until after the death of the drawer. The state claimed the funds by escheat. *Held*, that the defendant is entitled to them. *Phinney* v. *State ex rel. Stratton*, 78 Pac. Rep. 927 (Wash.).

For a discussion of the principles involved, see 17 HARV. L. REV. 104.

[8] See Boyd *v.* Alabama, 94 U. S. 645; Bernard *v.* Hoboken, 27 N. J. Law 412.